THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.16897 of 2007

Date: 13th September, 2007

Between :-

M/s. Sun Rise Agro Tech., rep. By its Partner,
G. Srinivasulu .. Petitioner

And

The Commissioner & Director of
Agriculture, Andhra Pradesh,
Gunfoundry, Hyderabad and another ..
Respondents

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ORDER:-

The matter is coming up for admission.

2. Heard Sri G.L.Nageshwara Rao, the learned Counsel representing the writ petitioner and the learned G.P. for Agriculture.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent and his men in insisting the petitioner to obtain license for the sale and supply of the Bio-products as illegal, arbitrary, unconstitutional and without jurisdiction and further direct the respondent not to interfere with the business of the petitioner in any manner in sale and distribution of the Bio-products and pass such other suitable orders.

4. It is stated that the petitioner is doing business in sale and supply of the Bio-Fertilizers and products like Potash bacteria, U.A.M.,, etc., and also the Fertilizers and Pesticides with VAT Registration No.28157180291 and the said products are only known as bio-products and the same are manufactured without usage of any toxic chemicals unlike the manufacturing of regular pesticides. It is also stated that the said bio-products are used for fertility of the soil and the products enrich the soil and

ensures the protection of the plants/crops from viral, bacterial, fungal and other infections besides also useful for getting more produce of the crop. It is also further stated that in Rural India, the farmers are not having knowledge about the potentiality of the soil and instead of raising alternative crops which gives more fertility to the soil are following the old traditional system of raising the same crops and the farmers are sustaining huge losses and not getting good yield of the produce. It is also stated that the Agricultural Research Organization and the Scientists recommended all the bio-products like above mentioned products for the fertility of the soil and also protection for the crops. It is further stated that the petitioner is engaged in the manufacture, sale of the said bio-products and which are not covered under the Insecticides Act, 1968 and the Fertilizers Control (Order) Act, 1985. It is also further stated that even though no permission is required for manufacture, sale of the bio-products, the respondent and his men are insisting the petitioner to obtain marketing permission under the Insecticides Act, 1968 for the purpose of marketing and selling the bio-products. It is also further stated that the Insecticides Act, 1968 provides for the regulation of manufacturing, distribution and sale of Insecticides. It is also stated that the provisions of the above Act would be

applicable only in respect of any substance specified in the schedule under the Act or such other substance as may be included in the schedule by issuing notification and publishing the same in the Gazette. It is further stated that the bio-products of the petitioner were not been included in the schedule to the Insecticides Act, 1968 and do not contain any of the substances mentioned in the schedule. It is also further stated that even though it is not necessary to obtain permission for marketing of the bio-products, the respondent and his men who are the regulatory authority for the supervision and control of Insecticides and Pesticides, the respondents are insisting the petitioner to obtain marketing permission for sale of all the bio-products by the petitioner and dealers appointed by the petitioner. It is further stated that in the similar circumstances when the respondent is insisting for obtaining marketing permission, the aggrieved persons approached this Court by filing Writ Petition in W.P.No.8207/2006 and batch and also W.P.No.13405/2006. Then, this Hon'ble Court pleased to pass the following Order:-

> *"In view of the fact that no license is required under the Act or manufacture and sale of the Bio-products as long as they do not contain any ingredients of Insecticides as*

mentioned in the schedule i.e., Antagonistic Fungi and Bacteria, respondent can not interfere with the store, sale and distribution of Bio-products belonging to the petitioners.

It is needless to say if the bio-products contain any chemical or insecticides which endanger the environment, it is always open for the concerned authorities to take appropriate action against the petitioner – manufacturers and the dealers of the said bio-products, and by the Executive Magistrate in exercise of powers under Section 133 of Cr.P.C."

It is further stated that since several bio-products are used as Fertilizer Agents in the State of Andhra Pradesh and there is no complaint whatsoever from the agriculture sector about any loss/damage being caused or occasion on account of the bio-products being used and therefore, the respondent or the subordinate officers of the respondent are not having any power to interfere with the manufacture, sale and supply of the petitioner Bio-products through the licensed stockists/dealers of pesticides and Fertilizers and thus the action of the respondents in interfering with the sale and supply of Bio-products of the petitioner is illegal, arbitrary, unconstitutional and violative of Articles 14 and 19 (1)(g) of the Constitution of India.

5. Reliance also was placed on the decisions made by

this Court in W.P.No.8207/2006 and Batch and also W.P.No.17508/2007 and Batch. It is not in serious controversy that in similar cases, the Writ Petitions were disposed of with certain directions. It is also stated that these matters were not carried by way of Writ Appeals. This Court also disposed of W.P.Nos. 19226/2007, 19247/2007, 19265/2007, 19285/2007 and 19286/2007 on 11-9-2007 in the light of the views expressed by this Court in the aforesaid Batch referred to supra.

6. In view of the same, the Writ Petition is disposed of with the following directions:-

(a) *it shall be open to the petitioners to submit a sample of 5 kg. of each product dealt with by them, together with the corresponding literature, throwing light upon the manufacturing process as well as the contents thereof, to the respondent herein;*

(b) *within two (2) weeks from the date of submission of the samples and the literature by the petitioners, the respondent shall get the same analysed in a suitable laboratory and intimate the result of the analysis, to the petitioners;*

(c) *in case, the analysis reveals that the products dealt with by the petitioners answer the description of the products mentioned in Schedule-III to the Control Order, the petitioners shall be entitled to deal with the products, only after obtaining licence under the Control Order. On the other hand, if the result is found otherwise,*

the petitioners shall not be subjected to the regime under the Control Order or the Act; and

(d) *if the respondent fails to intimate the result of the analysis within two (2) weeks from the date of submission of the samples and the literature, it shall be open to the petitioners to deal with the products, notwithstanding the impugned letter and the memo, as long as the products are not insecticides or chemicals.*

No order as to costs.

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Justice P.S.Narayana

13th September, 2007
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